

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICK LEE NELSON,)	
)	No. CV-08-3063-CI
Plaintiff,)	
)	ORDER GRANTING PLAINTIFF'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	AND REMANDING FOR
MICHAEL J. ASTRUE,)	ADDITIONAL PROCEEDINGS
Commissioner of Social)	PURSUANT TO SENTENCE
Security,)	FOUR 42 U.S.C. § 405(g)
)	
Defendant.)	
)	

BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 13, 15.) Attorney D. James Tree represents Plaintiff; Special Assistant United States Attorney David M. Blume represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and remands the matter to the Commissioner for additional proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff protectively filed a Supplemental Security Income (SSI) application on April 21, 2004, alleging disability due a degenerative disc disease and an onset date in 2000. (Tr. 76.) In his appeal report form dated September 7, 2004, Plaintiff alleged

1 additional impairments: arthritis, pain, right knee pain/problems;
2 illiteracy, learning disabled, high blood pressure, severe muscle
3 spasms and depression. (Tr. 48, 103.) Plaintiff was awarded SSI
4 medical benefits on March 17, 2006. (Tr. 31-35.) Following a
5 denial of SSI disability benefits at the initial stage and on
6 reconsideration, a hearing was held before Administrative Law Judge
7 (ALJ) Peter Baum on October 25, 2006. (Tr. 468-85.) The alleged
8 onset date was amended to June 1, 2005, at the administrative
9 hearing. (Tr. 473.) On January 30, 2007, ALJ Baum denied benefits;
10 review was denied by the Appeals Council. (Tr. 22, 6-8.) This
11 appeal followed. Jurisdiction is appropriate pursuant to 42 U.S.C.
12 § 405(g).

13 STANDARD OF REVIEW

14 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
15 court set out the standard of review:

16 The decision of the Commissioner may be reversed only if
17 it is not supported by substantial evidence or if it is
18 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
19 1097 (9th Cir. 1999). Substantial evidence is defined as
20 being more than a mere scintilla, but less than a
21 preponderance. *Id.* at 1098. Put another way, substantial
22 evidence is such relevant evidence as a reasonable mind
23 might accept as adequate to support a conclusion.
24 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
25 evidence is susceptible to more than one rational
26 interpretation, the court may not substitute its judgment
27 for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
28 *Morgan v. Commissioner of Social Sec. Admin.* 169 F.3d 595,
599 (9th Cir. 1999).

The ALJ is responsible for determining credibility,
resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are reviewed
de novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir. 2000).

SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy" 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from licensed medical professionals." *Id.* (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

STATEMENT OF FACTS

The facts of the case are set forth in detail in the transcript of proceedings (Tr.), and are briefly summarized here. Plaintiff was 45 years old at the time of the administrative hearing. (Tr. 473.) He testified he went to school until the 11th grade and was in special education classes all his life. He was unsuccessful at attempting to get his high school equivalency degree. (Tr. 473-74.)

1 He was in jail for a burglary conviction from 2000 to 2004, and
2 worked as a short order cook after his release from jail. (Tr. 475-
3 76.) Plaintiff testified he could no longer work because of ongoing
4 pain. He stated he could walk about a block slowly, but falls
5 several times a week due to pain. He also reported he needs to lie
6 down a couple times a day. (Tr. 482-83.)

7 **ADMINISTRATIVE DECISION**

8 At step one, ALJ Baum found Plaintiff had not engaged in
9 substantial gainful activity since the amended onset date. (Tr.
10 19.) He determined Plaintiff had the severe impairment of
11 degenerative disk disease. (Tr. 19.) At step three he found
12 Plaintiff "does not have an impairment or combination of impairments
13 that meets or medically equals one of the listed impairments in 20
14 C.F.R. Part 404, Subpart P. Appendix I (the Listings). (*Id.*) He
15 determined Plaintiff had the residual functional capacity (RFC) for
16 the "full range of sedentary work on a regular and continuing basis"
17 (Tr. 19), but was unable to perform his past relevant work. (Tr.
18 21.) The ALJ found Plaintiff had a limited education "with a third
19 grade reading level and is able to communicate in English." (*Id.*)
20 Based on this RFC and applying the Commissioner's Medical-Vocational
21 Guidelines (the Grids),¹ the ALJ determined Plaintiff could perform

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23 ¹ The Grids were adopted by the Social Security Administration
24 to improve the efficiency and uniformity of Social Security benefits
25 proceedings. *Desrosiers v. Secretary of Health and Human Serv's*,
26 846 F.2d 573, 577 (9th Cir. 1988). "The grids correlate a claimant's
27 age, education, previous work experience and residual functional
28

1 other jobs in the national economy and was not "disabled" as defined
2 by the Social Security Act through the date of the decision. (Tr.
3 22.)

4 ISSUES

5 The question presented is whether there is substantial evidence
6 to support the ALJ's decision denying benefits and, if so, whether
7 that decision was based on proper legal standards. Plaintiff
8 contends the ALJ erred when he (1) rejected Plaintiff's wrist
9 impairment at step two; (2) improperly rejected his physician's
10 medical opinions; (3) improperly rejected Plaintiff's testimony; and
11 (4) did not meet the Commissioner's burden at step five. (Ct. Rec.
12 14 at 8-9.)

13 DISCUSSION

14 A. Step Two Findings

15 Plaintiff contends the medical evidence submitted regarding his
16 wrist impairment is sufficient to satisfy the "*de minimis*" threshold
17 at step two. He claims the ALJ's error at step two tainted the
18 sequential evaluation because non-exertional limitations due to his
19 wrist impairment were not included in his RFC or in step five
20 findings. (Ct. Rec. 14 at 11-13.)

21 At step two of the sequential process, the ALJ must determine
22 whether a claimant suffers from a "severe" impairment, *i.e.*, one
23 which has more than a slight effect on the claimant's ability to

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25 capacity to direct a finding of either disabled or not disabled."
26 *Cooper v. Sullivan*, 880 F.2d 1152, 1155 (9th Cir. 1989). Their use
27 was upheld as valid in *Heckler v. Campbell*, 461 U.S. 458 (1983).

1 work. To satisfy step two's requirement of a severe impairment, the
2 claimant must prove the existence of a physical or mental impairment
3 by providing medical evidence consisting of signs, symptoms, and
4 laboratory findings; the claimant's own statement of symptoms alone
5 will not suffice. 20 C.F.R. § 416.908. The effects of all symptoms
6 must be evaluated on the basis of a medically determinable
7 impairment which can be shown to be the cause of the symptoms. 20
8 C.F.R. § 416.929.

9 Once medical evidence of an underlying impairment has been
10 shown, medical findings are not required to support the alleged
11 severity of pain. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.
12 1991). However, an overly stringent application of the severity
13 requirement violates the statute by denying benefits to claimants
14 who do meet the statutory definition of disabled. *Corrao v.*
15 *Shalala*, 20 F.3d 943, 949 (9th Cir. 1994). Thus, the Commissioner
16 has passed regulations which guide dismissal of claims at step two.
17 Those regulations state an impairment may be found to be "non-
18 severe" only when evidence establishes a "slight abnormality" that
19 has "no more than a *minimal effect* on an individual's ability to
20 work." *Id.* (citing *Social Security Ruling (SSR)* 85-28). See 42
21 U.S.C. § 423(d)(2)(B)(Supp. III 1991).

22 The step two inquiry is a *de minimis* screening device to
23 dispose of groundless or frivolous claims. *Bowen v. Yuckert*, 482
24 U.S. 137, 153-154 (1987). The ALJ must consider the combined effect
25 of all of the claimant's impairments on the ability to function,
26 without regard to whether each alone is sufficiently severe.
27 Ignoring medical evidence of impairments and their limiting effects
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1 without giving "specific legitimate reasons for doing so" is legal
2 error. *Smolen v. Chater*, 80 F.3d 1273, 1282-83 (9th Cir. 1996),
3 (*citing Cotton v. Bowen*, 799 F.2d 1403, 1408-09 (9th Cir. 1986),
4 *overruled on other grounds*); SSR 85-28. Therefore, the adjudicator
5 also must identify non-severe impairments and their effects on work
6 activities to fully evaluate a claimant's ability to work.

7 The adjudicator's role at step two is further explained in the
8 Commissioner's policy ruling:

9 A determination that an impairment(s) is not severe
10 requires a careful evaluation of the medical findings
11 which describe the impairment(s) and an informed judgment
12 about its (their) limiting effects on the individual's
13 physical and mental ability(ies) to perform basic work
14 activities; thus, an assessment of function is inherent in
the medical evaluation process itself. At the second step
of sequential evaluation, then, medical evidence alone is
evaluated in order to assess the effects of the
impairment(s) on ability to do basic work activities.

15 SSR 85-28. The regulations thus advise the adjudicator that
16 "[g]reat care should be exercised in applying the not severe
17 impairment concept." *Id.*

18 In determining whether a claimant has a severe impairment the
19 ALJ must evaluate the medical evidence submitted and explain the
20 weight given to the opinions of accepted medical sources in the
21 record. The regulations distinguish among the opinions of three
22 types of accepted medical sources: (1) sources who have treated the
23 claimant; (2) sources who have examined the claimant; and (3)
24 sources who have neither examined nor treated the claimant, but
25 express their opinion based upon a review of the claimant's medical
26 records. 20 C.F.R. § 416.927. A treating physician's opinion
27 carries more weight than an examining physician's, and an examining
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1 physician's opinion carries more weight than a reviewing or
2 consulting physician's opinion. *Lester v. Chater*, 81 F.3d 821, 830
3 (9th Cir. 1995). The treating physician's opinion is given special
4 weight because she is employed to cure and has a greater opportunity
5 to observe the claimant's physical condition. *Fair v. Bowen*, 885
6 F.2d 597, 604-05 (9th Cir. 1989); *Murray v. Heckler*, 722 F.2d 499,
7 502 (9th Cir. 1983).

8 If a treating physician's opinions are not contradicted, they
9 can be rejected only with "clear and convincing" reasons. *Lester*,
10 81 F.3d at 830. If contradicted, the ALJ may reject the opinion if
11 he states specific, legitimate reasons that are supported by
12 substantial evidence. *Flaten v. Secretary of Health and Human*
13 *Serv.*, 44 F.3d 1453, 1463 (9th Cir. 1995); *Fair*, 885 F.2d at 605.
14 "As is the case with the opinion of a treating physician, the
15 Commissioner must provide 'clear and convincing' reasons for
16 rejecting the uncontradicted opinion of an examining physician."
17 *Lester*, 81 F.3d at 830 (citation omitted). If the opinion is
18 contradicted, it can only be rejected for specific and legitimate
19 reasons that are supported by substantial evidence in the record.
20 *Andrews*, 53 F.3d at 1043. A medical specialist's opinion generally
21 is given more weight than that of a medical source who is not a
22 specialist. 20 C.F.R. § 416.927 (d)(5).

23 Historically, the courts have recognized conflicting medical
24 evidence, the absence of regular medical treatment during the
25 alleged period of disability, and the lack of medical support for
26 doctors' reports based substantially on a claimant's subjective
27 complaints of pain as specific, legitimate reasons for disregarding
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1 the treating physician's opinion. *Flaten*, 44 F.3d at 1463-64; *Fair*,
2 885 F.2d at 604. However, when an ALJ finds a claimant's statements
3 as to the severity of impairments, pain and limitations are not
4 credible, the ALJ must make a credibility determination with
5 findings sufficiently specific to permit the court to conclude the
6 ALJ did not arbitrarily discredit claimant's allegations. *Thomas v.*
7 *Barnhart*, 278 F.3d 947, 958-959 (9th Cir. 2002); *Bunnell v. Sullivan*,
8 947 F.2d 341, 345-46 (9th Cir. 1991) (en banc). If there is no
9 affirmative evidence that the claimant is malingering, the ALJ must
10 provide "clear and convincing" reasons for rejecting the claimant's
11 allegations regarding the severity of symptoms. *Reddick v. Chater*,
12 157 F.3d 715, 722 (9th Cir. 1998).

13 Here, Plaintiff submitted medical records indicating he had
14 injured his left wrist in September 2004, several months after he
15 applied for SSI benefits. The records show he noticed wrist pain in
16 October 2004. After x-rays did not detect bony abnormalities, his
17 treating physician sent him to Occupational Medicine, where he was
18 evaluated for left wrist pain on November 30, 2004. (Tr. 243, 433.)
19 At that time, the treating nurse noted Plaintiff had a long history
20 of arthritis, for which he was being treated, and was wearing a
21 splint to help with the wrist pain; occupational therapy was
22 recommended and work restrictions were imposed. (Tr. 434.) In
23 January 2005, Plaintiff was seen by William Drury, M.D. who
24 recommended a wrist arthrogram to determine if there was an injury
25 to the triangular fibrocartilage complex (TFCC). (Tr. 431.) Dr.
26 Drury also recommended continued use of the splints. *Id.* A report
27 from Roy Pierson, M.D., dated September 3, 2005, indicates he

1 reviewed documentation of a left wrist TFCC tear, and "because of
2 the complexity of [Plaintiff's] condition," recommended an
3 evaluation by a hand surgery sub-specialist, noting the condition
4 was "not a straightforward TFCC tear." (Tr. 426-27.) Medical
5 records also indicate Plaintiff received "E-stim" and ultrasound
6 treatment for several months. (Tr. 379-405.)

7 In October 2005, Plaintiff was advised to keep his wrist
8 immobilized until he could see Dr. Adkinson. (Tr. 410.)² In March
9 2006, he was placed on work restrictions of no lifting over five
10 pounds, no repetitive twisting or turning with the left wrist by the
11 Occupational Health treatment provider. (Tr. 416.) Thus, objective
12 medical evidence established a medically determinable condition that
13 caused more than a slight abnormality in Plaintiff's ability to
14 work.³ *Corrao v. Shalala*, 20 F.3d 943, 949 (9th Cir. 1994); *SSR 85-*

16 ² The record does not include records from Dr. Adkinson,
17 although there is reference in later chart notes of an independent
18 medical examination completed on March 2, 2006. (Tr. 416.) On
19 remand, this evaluation should be located and reviewed by the
20 Commissioner. See *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir
21 2001).

22 ³ The Commissioner's memorandum of authorities presents an
23 argument that the wrist impairment does not meet the duration
24 requirement. (Ct. Rec. 16 at 8.) However, the ALJ did not give
25 this as a reason for his rejection of the wrist impairment (Tr. 20),
26 and the court is constrained to review only the findings articulated
27 by the ALJ in his decision. *Connett v. Barnhart*, 340 F.3d 871, 874

1 28.

2 The ALJ did not summarize medical evidence of Plaintiff's wrist
3 injury, evaluation, and treatment, and he did not reject Dr.
4 Pierson's opinion that Plaintiff's conditions was "complex,"
5 requiring further evaluation and treatment. In a brief mention of
6 the wrist injury, the ALJ found, "The claimant developed a left
7 wrist injury which caused him pain, but with occupational therapy
8 treatment and a wrist splint, he was able to decrease the pain."
9 (Tr. 21.) This finding does not address the documented restrictions
10 on left wrist mobility and is not sufficient to reject at step two
11 the medical evidence presented. *Webb v. Barnhart*, 433 F.3d 683,
12 688 (9th Cir. 2005). The objective evidence clearly establishes a
13 medical diagnosis, treatment, complaints consistent with the
14 diagnosis, and documented work restrictions; therefore, Plaintiff's
15 wrist impairment is considered "severe" at step two. *Id.* The ALJ
16 erred at step two.

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18 (9th Cir. 2003); *Pinto v. Massanari*, 249 F.3d 840, 847-48 (9th Cir.
19 2001). Further, as discussed above, the record indicates
20 Plaintiff's wrist injury occurred after his application for SSI, and
21 was evaluated and treated continuously from the time he started
22 experiencing pain in October 2004 until March 2006. Plaintiff
23 testified that later attempts to work were unsuccessful because he
24 could not bend or pick up things. (Tr. 476.) This evidence
25 satisfies the duration requirement. 20 C.F.R. § 416.905; see also
26 *Corrao*, 20 F.3d at 949 (overly stringent application of statute
27 should not be used to deny benefits at step two).

1 Legal error is harmless when the correction of that error would
2 not alter the result. *Johnson v. Shalala*, 60 F.3d 1428, 1436 n.9
3 (9th Cir. 1995). Here, however, the erroneous rejection of
4 Plaintiff's wrist impairment at step two was prejudicial to
5 Plaintiff throughout the sequential process and, therefore, is not
6 harmless error. Specifically, in this RFC determination, the ALJ
7 found Plaintiff capable of a full range of sedentary work "on a
8 regular and continuing basis," without considering documented, non-
9 exertional restrictions in Plaintiff's wrist mobility. (Tr. 19-22.)
10 Although sedentary work involves lifting or carrying no more than 10
11 pounds at a time, and occasional (up to one-third of the time)
12 carrying of articles like papers or small tools, the Commissioner's
13 policy ruling specifically states that "most unskilled sedentary
14 jobs require good use of the hands and fingers for repetitive hand-
15 finger actions." SSR 83-10 (emphasis added). The ALJ's inclusion
16 of effects of pain and limitations due to twisting and repetitive
17 actions of the left wrist could alter significantly the outcome of
18 the hearing if not properly rejected or discounted. Therefore, the
19 Commissioner's failure to properly consider Plaintiff's wrist
20 impairment at step two is reversible error.

21 **B. Credibility Findings**

22 Plaintiff contends the ALJ did not properly reject his
23 testimony. As stated above, where, as here, there is no evidence of
24 malingering, the ALJ must make a credibility determination with
25 findings sufficiently specific to permit the court to conclude the
26 ALJ did not arbitrarily discredit claimant's allegations. *Thomas*,
27 278 F.3d at 958-959. In addition to ordinary techniques of
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1 credibility evaluation, the ALJ may consider the following factors
2 when weighing the claimant's credibility: the claimant's reputation
3 for truthfulness, inconsistencies either in his allegations of
4 limitations or between his statements and conduct, daily activities
5 and work record, and testimony from physicians and third parties
6 concerning the nature, severity, and effect of the alleged symptoms.
7 *Fair v. Bowen*, 885 F.2d 597, n.5 (9th Cir. 1989); *Light v. Social*
8 *Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

9 Here, the ALJ found Plaintiff's statements were not credible
10 because objective medical evidence did not support his complaints.
11 This reason alone is not sufficient to discredit a claimant's
12 subjective complaints. SSR 96-7p. The ALJ also made the general
13 finding that Plaintiff did not receive "the type of medical
14 treatment one would expect for a totally disabled individual." This
15 reason is not legitimate since Plaintiff was incarcerated until
16 2004, had documented arthritis and nerve encroachment, and did not
17 receive medical benefits until March 2006. Further, the record
18 indicates that Plaintiff was waiting for authorization for surgery
19 on his wrist in December 2005, which may have been contingent upon
20 medical coverage. (Tr. 31-35, 420.) Other reasons given were: (1)
21 an examining physician observed "normal behavior once the
22 examination was completed" in contrast to behavior exhibited during
23 the one-time exam; (2) "[o]verall, the claimant's reported limited
24 daily activities are considered to be outweighed by other factors
25 discussed in the decision"; (3) Plaintiff was "vague" in his
26 description of symptoms; and (4) his daily activities "cannot be
27 objectively verified with any reasonable degree of certainty," (Tr.

20, 21.) The ALJ's credibility findings are not sufficiently specific or "clear and convincing" to reject totally Plaintiff's subjective complaints of pain and limitations. See *Lester*, 81 F.3d at 834 (a general statement that testimony is unbelievable is not "clear and convincing").

C. Remedy

Remand for additional proceedings is proper where defects in the administrative proceedings can be remedied. See *Gonzalez v. Sullivan*, 914 F.2d 1197, 1202 (9th Cir. 1990). Here, a full five step sequential evaluation with the assistance of a vocational expert is necessary to ascertain whether there are jobs Plaintiff can perform. *Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007) (citing *Tackett*, 180 F.3d at 1100).

The Commissioner's policy ruling specifically directs that where pain is alleged, the RFC assessment must explain the effect of pain on the claimant's ability to work. SSR 96-8p. Where non-exertional limitations significantly restrict the claimant's ability to tolerate certain work settings, the ALJ cannot rely solely on the Grids.⁴ *Cooper*, 880 F.2d at 1156. Where non-exertional limitations are established, the Grids are used as a "framework," because alone, the Grids do not fully describe the claimant's abilities and limitations. *Tackett*, 108 F.3d at 1102. However, as stated by the *Hoopai* court, "the satisfaction of the step-two threshold

⁴ Non-exertional limitations are those that do not depend on an individual's physical strength, such as pain, manipulative limitations or mental limitations. SSR 96-8p.

1 requirement that a claimant prove [his] limitations are severe is
2 not dispositive of the step-five determination of whether the non-
3 exertional limitations are sufficiently severe such as to invalidate
4 the ALJ's exclusive use of the [Medical-Vocational Guidelines]
5 without the assistance of a vocational expert." *Hoopai*, 499 F.3d at
6 1078. The use of the Grids may be precluded where, as here, the
7 record documents limitations due to pain and non-exertional
8 restrictions. *Id.*

9 As discussed above, Plaintiff is prejudiced by the improper
10 exclusion of the diagnosed severe impairment and documented non-
11 exertional limitations in the ALJ's sequential evaluation;
12 therefore, remand for further proceedings is appropriate. *Stout v.*
13 *Commissioner, Social Sec. Admin.*, 454 F.3d 1050, 1057 (9th Cir.
14 2006). In addition, remand is necessary for the proper evaluation
15 of acceptable medical source opinions, consideration of symptoms and
16 limitations caused by medically determinable impairments in
17 combination, and vocational expert testimony. 20 C.F.R. 416.923;
18 *Hoopai*, 499 F.3d at 1078. Finally, remand is proper for specific
19 credibility findings, supported by "clear and convincing" reasoning,
20 to justify the total rejection of Plaintiff's pain complaints.
21 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1045 (9th Cir. 2007)(remand
22 proper if outstanding issues must be resolved); *Connett*, 340 F.3d at
23 876.

24 On remand, additional evidence that is relevant and material to
25 the period at issue may be submitted, including the hand evaluation
26 referenced by nurse practitioner Lisa Rutherford on March 9, 2006.
27 (Tr. 416.) If necessary, medical expert testimony may be obtained
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1 to assist in the evaluation of conflicting medical reports, if any.
2 A reasonable ALJ may find Plaintiff "disabled" upon consideration
3 throughout the sequential evaluation process of all impairments,
4 unrejected medical opinions, Plaintiff's credible complaints, and
5 limitations supported by the record. Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is
8 **GRANTED**. The matter is remanded to the Commissioner for additional
9 proceedings pursuant to 42 § U.S.C. 405(g).

10 2. Defendant's Motion for Summary Judgment dismissal (**Ct.**
11 **Rec. 15**) is **DENIED**.

12 3. Application for attorney fees may be made by separate
13 motion.

14 The District Court Executive is directed to file this Order and
15 provide a copy to counsel for Plaintiff and Defendant. The file
16 shall be **CLOSED** and judgment entered for **Plaintiff**.

17 DATED May 28, 2009.

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19 S/ CYNTHIA IMBROGNO
20 UNITED STATES MAGISTRATE JUDGE
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